

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TONYA KNIGHT,

Plaintiff,

Case No. 12-CV-12129

vs.

HON. MARK A. GOLDSMITH

WELLS FARGO,

Defendant.

ORDER

(1) ADOPTING THE RECOMMENDATION CONTAINED IN THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION DATED JANUARY 8, 2013 (DKT. 28),
(2) GRANTING IN PART AND DENYING IN PART DEFENDANT'S MOTION TO DISMISS (DKT. 3), AND (3) GRANTING IN PART AND DENYING IN PART PLAINTIFF'S MOTION FOR LEAVE TO FILE A FIRST AMENDED COMPLAINT (DKT. 13)

This matter is presently before the Court on the Report and Recommendation (R&R) of Magistrate Judge David R. Grand, issued on January 8, 2013. In the R&R, the Magistrate Judge recommends that Defendant's motion to dismiss and Plaintiff's motion for leave to file an amended complaint both be granted in part and denied in part. The complaint in this case contains three claims: trespass, breach of contract, and fraud. Regarding Plaintiff's motion for leave to amend the complaint, the Magistrate Judge recommends that Plaintiff be allowed to amend the fraud claim and but not allowed to amend the other claims. As to the motion to dismiss, the Magistrate Judge recommends that the motion be denied as moot with regard to the fraud claim (in light of the permitted amendment) and granted as to the trespass and breach of contract claims.

The parties have not filed objections to the R&R, and the time to do so has expired. See

Fed. R. Civ. P. 72(b)(2). The failure to file a timely objection to an R&R constitutes a waiver of the right to further judicial review. See Thomas v. Arn, 474 U.S. 140, 150 (1985) (“It does not appear that Congress intended to require district court review of a magistrate’s factual or legal conclusions, under a de novo or any other standard, when neither party objects to those findings.”); Smith v. Detroit Fed’n of Teachers, 829 F.2d 1370, 1373-4 (6th Cir. 1987) (failure to file objection to R&R “waived subsequent review of the matter”); Cephas v. Nash, 328 F.3d 98, 1078 (2d Cir. 2003) (“As a rule, a party’s failure to object to any purported error or omission in a magistrate judge’s report waives further judicial review of the point.”); Lardie v. Birkett, 221 F. Supp. 2d 806, 807 (E.D. Mich. 2002) (“As to the parts of the report and recommendation to which no party has objected, the Court need not conduct a review by any standard.”). There is some authority that a district court is required to review the R&R for clear error, see Fed. R. Civ. P. 72 Advisory Committee Note Subdivision (b) (“When no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.”). Therefore, the Court has reviewed the R&R for clear error. On the face of the record, the Court finds no clear error.

Accordingly, Plaintiff’s motion for leave to file a first amended complaint (Dkt. 13) is granted in part as to the fraud claim and denied as to the other claims. Defendant’s motion to dismiss (Dkt. 3) is granted as to the trespass and breach of contract claims and denied as moot with regard to the fraud claim.

SO ORDERED.

Dated: February 1, 2013
Flint, Michigan

s/Mark A. Goldsmith
MARK A. GOLDSMITH
United States District Judge

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or First Class U.S. mail addresses disclosed on the Notice of Electronic Filing on February 1, 2013.

s/Deborah J. Goltz
DEBORAH J. GOLTZ
Case Manager